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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

NICHOLAS PAUL ZANE,

Defendant and Appellant.

B216491

(Los Angeles County
Super. Ct. No. SA069106)

APPEAL from a judgment of the Superior Court of Los Angeles County. James R. Dabney, Judge. Affirmed in part, reversed in part and remanded.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, David C. Cooke, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Nicholas Paul Zane (defendant) pleaded no contest to one count of grand theft of personal property. (Pen. Code, § 487, subd. (a).)¹ After a restitution hearing, the trial court ordered defendant to pay victim restitution in the amount of \$32,956. Defendant appealed the judgment following the restitution hearing.

Defendant's appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) raising no issues and requesting that this court independently review the record. Based on our independent review of the record, we conclude that defendant's sentence was unauthorized in that the trial court failed to impose additional mandatory assessments, surcharges, and penalties based on the \$10 crime prevention programs fine imposed pursuant to section 1202.5, subdivision (a). (*People v. Castellanos* (2009) 175 Cal.App.4th 1524 (*Castellanos*).) We reverse that fine and remand for the trial court to determine defendant's ability to pay the fine plus the additional sums required. In all other respects, we affirm the judgment.

BACKGROUND²

Defendant dated Veronica Salinas for approximately six months. On September 6, 2008, Ms. Salinas returned to her home and discovered that approximately \$50,000 worth of personal property was missing, including 46 pairs of designer shoes and 25 designer handbags. A surveillance video showed defendant entering Ms. Salinas's home during her absence.

¹ Statutory references are to the Penal Code unless stated otherwise. Defendant did not obtain a certificate of probable cause. (§ 1237.5.) Accordingly, defendant's appeal is limited to "[g]rounds that arose after entry of the plea and do not affect the plea's validity." (Cal. Rules of Court, rule 8.304(b)(4); *People v. Mendez* (1999) 19 Cal.4th 1084, 1099.)

² We derive the facts of defendant's crime from the preliminary hearing transcript.

Police executed a search warrant at defendant's residence and recovered approximately \$12,990 worth of Ms. Salinas's property, much of which was hidden under defendant's bed. After being advised of his *Miranda* rights,³ defendant told police that he thought Ms. Salinas was going out with someone else, and he was jealous and waiting for an apology. He had gotten angry and taken Ms. Salinas's shoes and purses. Defendant told a friend that the only way to hurt Ms. Salinas was to "take [her] material stuff."

Defendant was charged with one count of first degree residential burglary (§ 459) (count 1) and one count of grand theft of personal property (§ 487, subd. (a)) (count 2). Defendant reached a plea agreement that provided, in essence, that defendant would enter a plea of no contest to count 2, in exchange for the dismissal of count 1 and a sentence of three years on probation and either 200 hours of community service or 45 actual days in jail. In addition, defendant agreed to pay victim restitution in an amount ordered by the trial court not to exceed \$32,956.

On March 4, 2009, defendant pleaded no contest to count 2. The trial court dismissed count 1 and sentenced defendant to three years unsupervised probation and ordered defendant to perform 200 hours of community service or serve 45 actual days in jail. The amount of victim restitution was to be determined at a subsequent hearing. The trial court also imposed a \$200 restitution fine; a \$200 probation revocation restitution fine, stayed; a \$20 court security fee; a \$10 crime prevention programs fine; and a \$30 criminal conviction assessment. Defendant was given presentence credit of nine days, consisting of seven days of actual custody and two days of conduct credit.

The trial court held the restitution hearing on April 17, 2009. Ms. Salinas submitted an itemized claim and voluminous evidence to establish the value of the stolen property, including photographs, receipts and printouts from internet merchant sites showing the replacement cost of the property. Ms. Salinas explained to the trial court

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

how she had compiled the information and valued the items included in her claim. The trial court found that the replacement cost of the items claimed exceeded \$40,000, but ordered defendant to pay restitution to Ms. Salinas in the amount of \$32,956, pursuant to the terms of defendant's plea agreement. Defendant presented no evidence at the restitution hearing. Defendant timely appealed the judgment following the restitution hearing.

DISCUSSION

We appointed counsel to represent defendant on this appeal. After examining the record, appointed counsel filed an opening brief raising no issues, but requesting this court to review the record independently in accordance with *Wende, supra*, 25 Cal.3d 436. We gave notice to defendant that his appointed counsel had not found any arguable issues and that defendant had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wanted us to consider. We received no response.

After reviewing the entire record, we identified a single arguable issue relating to whether defendant's sentence was unauthorized because the trial court had failed to impose mandatory additional assessments, surcharges, and penalties based on the \$10 crime prevention programs fine. (§ 1202.5, subd. (a); see also *Castellanos, supra*, 175 Cal.App.4th at p. 1530.) We requested that counsel for the parties file letter briefs addressing that issue.

In *Castellanos, supra*, 175 Cal.App.4th at page 1530, this court held: "[W]hen a full \$10 section 1202.5, subdivision (a) fine is imposed, trial courts in Los Angeles County must also impose seven additional sums: the \$10 section 1464, subdivision (a)(1) penalty assessment; the \$7 Government Code section 76000, subdivision (a)(1) penalty assessment; the \$2 Government Code section 76000.5, subdivision (a)(1) penalty assessment; the \$2 Penal Code section 1465.7, subdivision (a) state surcharge; the \$3 Government Code section 70372, subdivision (a)(1) state court construction penalty; the Government Code section 76104.6, subdivision (a)(1) \$1 deoxyribonucleic acid penalty;

and the Government Code section 76104.7, subdivision (a) \$1 deoxyribonucleic acid state-only penalty. Thus, the additional sum due is \$26 if the trial court, as it did here, imposes the full section 1202.5, subdivision (a) \$10 fine in Los Angeles County.” The trial court in this case failed to impose these additional sums. Defendant’s sentence was in this respect unauthorized, and is subject to correction for the first time on appeal. (*Castellanos, supra*, 175 Cal.App.4th at p. 1530.)

When imposing a fine pursuant to section 1202.5, subdivision (a), the trial court is required to consider the defendant’s ability to pay, “tak[ing] into account the amount of any other fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.” (§ 1202.5, subd. (a); see also *Castellanos, supra*, 175 Cal.App.4th at pp. 1531-1532.) In this case, the record indicates that defendant worked as a personal trainer and masseur, but he requested and was appointed counsel on this appeal due to his indigency. In addition to the fine pursuant to section 1202.5, subdivision (a), the trial court also imposed a \$200 restitution fine and ordered defendant to pay over \$32,000 in victim restitution. Although the trial court implicitly determined that defendant had the ability to pay the \$10 fine, it did not have occasion to determine whether defendant had the ability to pay that fine *plus* the additional mandatory assessments, surcharges, and penalties. (*Castellanos, supra*, 175 Cal.App.4th at p. 1531.) As in *Castellanos*, therefore, we remand to the trial court to “determine whether to impose: the full 1202.5, subdivision (a) \$10 fine plus the . . . additional assessments, surcharge, and penalties we have explained must be imposed; a lesser amount plus the obligations we have discussed; or none at all.” (*Id.* at p. 1532.)

We have otherwise examined the entire record and are satisfied that defendant’s attorney fully complied with her responsibilities on appeal and that no other arguable issues exist. (*Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The \$10 section 1202.5, subdivision (a) fine is reversed. We remand to the trial court to determine whether defendant has the ability to pay that fine plus the additional sums discussed in the body of this opinion. Based on its determination, the trial court shall impose the full section 1202.5, subdivision (a) fine plus the additional sums; a lesser fine plus the additional sums; or no fine. In all other respects, the judgment is affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

WEISMAN, J.^{*}

^{*} Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.